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C O N F I D E N T I A L SECTION 01 OF 02 BUCHAREST 001230

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STATE FOR EUR/NCE - AARON JENSEN

E.O. 12958: DECL: 10/30/2017
TAGS: [PGOV](#) [KJUS](#) [KCOR](#) [PREL](#) [RO](#)
SUBJECT: CRIMINAL CODE REVISIONS: A PARLIAMENTARY
GET-OUT-OF-JAIL-FREE CARD?

REF: A) BUCHAREST 1215 B) BUCHAREST 1179

Classified By: PolCouns Theodore Tanoue for reasons 1.4 (b) and (d).

11. (C) Summary: Prosecutors and NGOs complain that parliament's amended draft Criminal Code and Criminal Procedures Code, if signed into law, would exculpate a wide variety of criminal acts by nullifying evidence gained outside of its new, highly restrictive procedures. In attempting to absolve themselves of any possible future indictment for high-level corruption, parliamentarians from all political parties have raised the bar for criminal prosecution for a range of crimes, including corruption, cyber crime, trafficking in persons and organized crime, until a new Criminal Code and Criminal Procedures Code are debated and adopted in spring 2008. End Summary.

12. (SBU) The Chamber of Deputies unanimously adopted amendments to the Criminal Code and Criminal Procedures Code on October 23 that severely limit prosecution of a broad range of criminals and instead criminalize journalists who broadcast audio/visual investigative evidence. Legal, Media, and human rights NGOs, along with prosecutors, criticized the amendments as effectively being a "get out of jail free card" which raises the bar for admitting in court evidence not only for high-level corruption, but for complex crime in general, including organized crime, trafficking in persons and drugs, and cyber crime, among others. The amendments were drafted by the Legal Committee of the Chamber of Deputies, and adopted by all political parties. NGOs have asked President Basescu to send it back to parliament, but without additional opposition to the law, parliamentarians would likely override the veto.

13. (SBU) These new amendments to the Criminal Code and Criminal Procedures Code prevent prosecutors from intercepting communications (conducting audio/visual recordings, wiretaps, or monitoring electronic communication) unless the defendant is notified of the start of a criminal investigation. The amendments also create criminal penalties of 2-7 years in prison for anyone who releases or broadcasts audio/visual evidence. They also raise the threshold for one of the most commonly used charges in corruption cases--"abuse in office with serious consequences"--from the current 60,000 euros to 9 million euros, reducing the possible prison sentences for many current investigations and narrowing the statute of limitations for many crimes. Another amendment reduces the possible timeframe of criminal investigations to 6 months; a limit prosecutors say is less than sufficient for complex criminal investigations. One amendment states that a warrant for a house search can only be given after a prosecutor submits the minutes of the conversation where the suspect refused to provide the specific object sought.

Another amendment would invalidate evidence if any procedure is violated. It would also become mandatory for expert opinions to be carried out at anyone's request--not just the prosecutor's or judge's--leading to delays in prosecuting future cases.

14. (C) The Initiative for a Clean Justice (ICJ), along with the Media Monitoring Agency (MMA), ProDemocracy Association (APD), and the Center for Independent Journalism (CJI) released its analysis of the draft law on October 28, and asked President Basescu not to sign it into law. ICJ legal analyst (and former Justice Ministry Anticorruption Director) Laura Stefan told PolOff October 29 that these amendments "break all the rules" as they create a "get out of jail free card" that applies not just to high-level corruption cases, but to all criminal cases. Stefan explained that if the code became law even for a day, any defendants currently being tried would be able to be judged according to the laws most favorable to the defense. She noted, however, that a new Criminal Code and Criminal Procedures Code was being hammered out "according to a different spirit" for introduction in Spring 2008, but added that the amended code would be applicable to any crimes committed during the interim period if the current amendments go into effect. She said this exculpation of past and future graft opportunities as the main motive for parliament rushing through these amendments, but added that these changes had the additional effect of weakening prosecutorial weapons in all crime cases. In pointing the finger at the Romanian parliament as a body, Stefan noted that instead of the usual practice of individual parliamentarians' attaching their names to specific amendments, most of these amendments were just listed as a "group decision" of the Legal Committee of the Chamber of Deputies.

BUCHAREST 00001230 002 OF 002

15. (C) Ioana Albani, Chief Prosecutor for cyber crime at the Directorate for the Investigation of Organized Crime and Terrorism (DIICOT) also outlined to PolOff during an October 29 meeting the many difficulties prosecutors would have should the amendments come into effect. She claimed that it would be "nearly impossible" to investigate cyber crime without the ability to intercept electronic communications before the suspect knows about it. Other types of investigations would be affected, given that current procedures exclude the defense attorney from being present, for example, to protect the identity of a trafficking victim or to gain a search warrant or warrant to intercept communications, but the amendments would inhibit such confidentiality and could tip off a suspect of the aim of

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specific warrants.

16. (C) Asked if there was anything in the new amendments that would help prosecutors do their jobs better, Albani replied flatly, "No, they (parliamentarians) wanted to be very precise in excluding evidence." She noted that much evidence could easily be thrown out immediately as a final decision, offering prosecutors no recourse. Albani said she was incredulous that one of the new provisions would take away the judge's role in determining whether evidence was obtained legally. Noting the recent scandal involving an Agriculture Minister taking bribes (ref B), Albani commented, "There was a panic for everybody after Remes" and added that these amendments were a "deliberate attempt to put a leash on justice."

17. (C) In a related development, President Basescu rejected Justice Minister Chiuariu's request for the dismissal of the National Anticorruption Directorate prosecutor Doru Tulus on October 29, calling instead for Chiuariu's resignation. Basescu lambasted Chiuariu as acting as "a shield, a protector for prospective offenders, rather than as a Minister of Justice." Basescu criticized Chiuariu for

requesting Tulus' dismissal without performing an analysis of the work of Tulus' section, and for ignoring the advice of the Superior Council of Magistrates prosecutors to drop the dismissal request, and for blocking the fight against corruption through emergency ordinances that thwart high-level corruption investigations. Basescu argued that Chiurariu "made this request simply because this is what his masters had asked him to do after appointing him as minister." Several observers believe Chiuariu will likely appeal this decision to the Constitutional Court.

18. (C) Comment: As noted in ref A, the televised airing of footage of the Agriculture Minister blatantly receiving a bribe has had a bombshell effect, as it has been seen by the public not just as an indictment of the current Tariceanu government, but of the practices of an entire political class. It is interesting to note that neither PD nor PLD objected. However, Parliament's move to close ranks and to put Romania's anti-corruption prosecutors under greater political control plays directly into President Basescu's hands, as he is unlikely to miss this opportunity to inveigh against Romania's culture of corruption as part of his campaign to adopt electoral code changes that will make parliamentarians more directly accountable to voters. Basescu will likely veto the bill or delay signing as long as he can as parliament has the votes to override his veto. We have heard from European Commission Anticorruption Task Force Manager Cristina Tauber that a new expert peer review team would come to Romania in November to monitor these developments that she is detailing to Brussels daily. We likewise will continue to monitor this legislation and the Ambassador will likely express concern on the progress against corruption in public and behind closed doors. End Comment.
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